Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

CLARENCE HAYWOOD,
Petitioner,

vs.

FERGUSON, ET AL.,
Respondent(s).

**On petition for a writ of certiorari to
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

CLARENCE HAYWOOD
Petitioner In Pro Per
Post Office Box 1262
San Bernardino, CA 92402
Phone: (909) 889-0401 ext. 210

FERGUSON, WARREN J.
United States Courthouse
411 West Fourth Street
Santa Ana, CA 92701

30 PGS

RULE 14, 1. (A) QUESTIONS PRESENTED FOR REVIEW

No. 1: Is a Judge immune from liability for non-judicial actions, or actions not taken in the Judge's judicial capacity, and is a Judge immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction?

No. 2: When a judge know that he or she lacks jurisdiction, or acts in the face of clearly valid statues or case law expressly depriving him or her of jurisdiction, is judicial immunity lost?

No. 3: Can a Judge be liable for participating in a conspiracy if acts indicating participation were taken by a judge otherwise than in his or her judicial role?

No. 4: Is there a question of immunity for a Judge from liability if Petitioner proves a conspiracy to obstruct justice, and the allegation is brought under the authority of 42 U.S.C. Sections 1985 (3) and 1986?

No. 5: Is a Pro se Plaintiff entitled by Federal law to amend his complaint to sufficiently plead?

No. 6: Does a law violate the Ex Post Facto clause if it:

(1) punishes as criminal an act which was innocent when committed;

(2) makes a crime's punishment greater than when the crime was committed; or

(3) deprives a person of a defense available at the time the crime was committed?

No. 7: What is the duty of a State Judge when he or she knows that a state statute violates the United States Constitution?

No. 8: Can state courts apply retrospective law, that it applies to events occurring before its enactment, and disadvantage the offender affected by it?

No. 9: Can Congress or any state pass any "Ex Post Facto" law?

No. 10: Is dismissal proper pursuant to Federal Rules of Civil Procedure 12 (b) (6), where there are factual issues in dispute, requiring trial?

LIST OF PARTIES

1. Circuit Judge, The Honorable Warren J. Ferguson
United States Courthouse
411 West Fourth Street
Santa Ana, California 92701

2. Circuit Judge, The Honorable Pamela A. Rymer
United State Court of Appeals Building
125 South Grand Avenue
Pasadena, California 91105-1621

3. Circuit Judge, The Honorable Michael Daly Hawkins
United State Courthouse
230 North First Avenue
Phoenix, Arizona 85025

4. Clarence Haywood, in Pro Per
Post Office Box 1262
San Bernardino, California 92402

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Opinion of the 9th Circuit Court of Appeals
February 27, 2002

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Order and Judgment of the Honorable Christina A. Snyder,
dated October 19, 2000.

STATEMENT OF JURISDICTION

This honorable court has jurisdiction given that 9th Circuit Judges, the Honorable Kozinski, T.G. Nelson and Tallman, on February 27, 2002, ordered that Appellant's petition for panel rehearing is denied, and stated that no further filings shall be accepted in this closed appeal. Please see Appendices A and B.

TABLE OF AUTHORITIES

1. Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 496 – 504.

2. Ashelman v. Pope, 793 F. 2d 1072, 1075 (9th Cir. 1986).

3. Collins v. Youngblood, 497 U.S. 37, 42 (1990).

4. California Department of Corrections v. Morales, 514 U.S. 499, 503 and W. 3 115 S. Ct. 1597 (1995).

5. Beazell v. Ohio, 269 U.S. 167.

6. Calder v. Bull, 3 Dall 386, 390 (1798).

7. Lindsey v. Washington, 301 U.S. 397 (1937).

8. Michael Wayne Riggs v. California, No. 98 – 5021 (1999).

9. Clark v. Warden, Md. Penitentiary C.A. 4 (Md) (1961) 293 F. 2d 497 Certiorari denied 82 S. Ct. 1149 369 U.S. 877, 8L. Ed 2d 279.

10. Bradley v. Fisher, S.C. 13 Wall 351 – 357.

11. Beard v. Udall, 648 F. 2d 1264 (9th Cir. 1980).

12. Rankin v. Howard, 633 F. 2d 844 (9th Cir. 1981).

13. Harvey v. Waldron, 210 F. 3d 1008, 1012 (9th Cir. 2000).

14. Forrester v. White, 484 U.S. 219 (7th Cir. 1988).

15. U.S. v. Ward Baking Co., E. D. Pa 1963 224 F. Supp. 66.

16. U.S. v. Gilboy, 160 F. Supp. 442 M.D. Pa. 1958.

17. Boddie v. Connecticut, 401 U.S. 371, 380 (1971).

18. U.S. v. Bufalino, C.A. N.Y. 1960, 285 F. 2d. 408.

19. Petibone v. U.S. Idaho, 1983, 13 S. Ct. 542, 148 U.S. 197, 37 L. Ed. 419.

20. U.S. v. Buck, P.A. 1860 Fed. Case No. 14 – 680.

21. Randal v. Brigham, 7 Wall, 523, 19 L. Ed. 285.

22. Yates v. Lansing, 9 Johns, 407 – 413, 432.

23. Doc and Associates Law Offices v. Napolitano, 252 F. 3d 1026 to 1029 (9th Cir. 2001).

24. Exparte Virginia, 100 U.S. 339 (1880).

25. Supreme Court of Virginia v. Consumers Union of United States, Inc., 446 U.S. 719 (1980).

26. Thompson v. Utah, 170 U.S. 343.

27. Weaver v. Graham, 450 U.S. 24 (1981).

28. Miller v. Florida, 482 U.S. 423 (1987).

29. Scheuer v. Rhodes, 416 U.S. 232.

30. Monroe v. Pape, 365 U.S. 167 (1961).

31. Butz v. Economou, 438 U.S. 478 (1978).

32. Harlow v. Fitzgerald, 457 U.S. 800 (1982).

33. Williams v. Taylor, 529 U.S. 362, 405 – 06 (2000).

34. Tran v. Lindsey, 212 F. 3d 1143, 1153 9th Cir. (2000).

35. Mireles v. Waco, 502 U.S. 9, [112 S. Ct. 266, 116 L. Ed 2d 9].

36. Pierson v. Ray, 386 U.S. 547 [87 S. Ct. 1213, 18 L. Ed 2d 288 (1967)].

37. Balistrei v. Pacifica Police Dept., 901 F. 2d 696, 699 (9th Cir. 1988).

38. Fredericksburg v. Contra County Dept. of Health Services, 172 F. 3d 1176, 1179 – 1181 (9th Cir. 1999).

39. Pryer v. Seyforth, Shaw, Fairweather and Geraldson, 212 F. 3d 976, 979 – 980 (7th cir. 2000).

40. Flyn v. Sandahl, 58 F. 3d 283 (7th Cir. 1995).

41. Pennzoil v. Texaco, Inc., 481 U.S. 1, 25.

42. May Co., Dept. Store v. Graphic Process Co., 637 F. 2d 1211, 1216 (9th Cir. 1980).

43. Spencer v. Texas, 385 U.S. 554, 560 (1967).

44. McDonald v. Massachusetts, Supreme Court Reporter 178 – 181 at pages 389 to 390 (1900).

FEDERAL AND STATE STATUTES

Federal

1. 28 U.S.C. Sections 2254, 2253, 2244(D), 42 U.S.C. Sections 1981, 1983, 1985(3) and 1986.

State

2. Penal Code Sections 667, 1170, 12, 667.5, subdivision (C) 1192.7 subdivision (C).

ARTICLES

1. ExPostfacto Clause of the 10th Section of Article 1.

2. Supremacy Clause of Article 6.

NO. 1

STATEMENT OF THE CASE

Petitioner filed in the 9th Circuit Court of Appeals for a request for authorization to file a second or successive 28 U.S.C. section 2254 habeas corpus petition in the United States District Court, Central District of California. Circuit judges Ferguson, Rymer and Hawkins took 3 1/2 months to deny Petitioner's request.

Please see 28 U.S.C. sections 2244(D). "The Court of Appeals shall grant or deny the authorization to file a second or successive application no later than 30 days after the filing of the motion." Petitioner brought suit against circuit judges Ferguson, Rymer and Hawkins for violating Petitioner's rights to due process and equal protection of the American laws, please see the 5th, 8th and 14th amendments to the federal constitution, and please see 28 U.S.C. sections 2244(D).

Petitioner brought his action under the authority of Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, pages 496 – 504.

The government argues that Petitioner's suit is barred by the doctrine of judicial immunity, that judges are absolutely immune from suit. The government cites Ashelman v. Pope, 793 F. 2d 1072, 1075 (9th Cir. 1986) as the basis in support of their argument.

The government did not challenge Petitioner's Original Complaint, and only challenged Petitioner's First Amended Complaint, where Petitioner challenged California's unconstitutional Three Strikes Legislation. Petitioner alleged in his First Amended Complaint that the retroactive application of 667 of the California Penal Code, California Three Strikes Legislation, violates the ex post facto clause of the 10th section of Article 1, and the supremacy clause of Article 6 of the federal constitution. Please see Collins v. Youngblood, 497 U.S. 37, 42 (1990); and California Department of Corrections v. Morales, 514 U.S. 499, 503 and N.3 115 S.Ct. 1597, 1600 – 01, 1603 and n.3 (1995).

A law violates the ex post facto clause only if it: (1) punishes as criminal an act which was innocent when committed; (2) makes a crime's punishment greater than when the crime was committed; or (3) deprives a person of a defense available at the time the crime was committed. Please see Collins v. Youngblood, 497 U.S. 37, 42 (1990); Beazell v. Ohio, 269 U.S. 167; legislatures may not retroactively alter the definition of crimes or INCREASE THE PUNISHMENT FOR CRIMINAL ACTS. Please see Calder v. Bull, 3 Dall. 386, 390 (1798); and Lindsey v. Washington, 301 U.S. 397, 401 (1937). In

Lindsey the United States Supreme Court established the proposition that the constitution "forbids the application of any new punitive measure to a crime already consummated," 301 U.S., at 401.

United States Supreme Court Justice, the Honorable Clarence Thomas, delivered the opinion in the Morales matter and said: "Article 1, section 10 of the constitution prohibits the states from passing any 'ex post facto law.'" In Collins v. Youngblood, 497 U.S. 37,41 (1990), WE REAFFIRMED that the EX POSTFACTO CLAUSE incorporated "a term of art with an established meaning at the time of the framing of the constitution." In accordance with this original understanding, we have held that the clause is aimed at laws that retroactively alter the definition of crimes or increase the punishment for criminal acts. Id., at 43 (Calder v. Bull, 3 Dall. 386, 391 – 392 (1798); Beazell v. Ohio, 269 U.S. 167, 169 – 170 (1925). California Department of Corrections v. Morales, 514 U.S. 499, 503 and N.3, 115 S. Ct. 1597, 1600 01, 1603 and n.3 (1995).

THE HONORABLE JUSTICE STEVENS' OPINION IN THE MORALES MATTER: "In light of the importance that the FRAMERS PLACED ON THE EX POST FACTO CLAUSE, we have always enforced the prohibition against the retroactive enhancement scrupulously. Any statute that authorizes an increased term of imprisonment for a past offense is invalid." Please see Miller v. Florida, 482 U.S. 423 (1987), (unanimous opinion), and Weaver v. Graham, 450 U.S. 24 (1981).

The constitution provides that "NO STATE shall pass any ex post facto law" Article 1, section 10. The Framers viewed the prohibition on ex post facto legislation as one of the fundamental protections against arbitrary and oppressive government, The Federalist no. 44, p. 282 C. Rossiter, Ed 1961). Similarly, Hamilton counted the prohibition on ex post facto laws among the three protections that he described as greater securities to liberty and republicanism "than any the Constitution contains." Id. No. 84, at 511; and please see Calder v. Bull, 3 Dall. 386, 390.

However, the Honorable Justice Stevens misrepresents the facts in Michael Wayne Riggs v. California, No. 98-5021, where he stated that no Federal Tribunal has yet addressed the question. Please see Collins v. Youngblood, Supra; and California Department of Corrections v. Morales, Supra.

In the Supreme Court of the United States, Michael Wayne Riggs v. California, on Petition for Writ of Certiorari to the Court of Appeals of California, Fourth Appellate District No. 985021, decided January 19, 1999.

The petition for a writ of certiorari is denied.

Opinion of JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, respecting the denial of the petition for a writ of

certiorari.

The Honorable Justice Stevens said: "This pro se petition for certiorari raises a serious question concerning the application of California's 'Three Strikes Law'," Cal. Penal code Ann. 667 (West Supp. 1998), to petty offenses.

In 1995, petitioner stole a bottle of vitamins from a supermarket. The California Court of Appeals described his offense as a petty theft motivated by homelessness and hunger.

The Honorable Justice Stevens went on to say: "Nevertheless, there are valid reasons for not issuing the writ in this case, neither the California Supreme Court nor any federal tribunal has yet addressed the question."

The Honorable Justice Stevens finally said:

> The denial of this petition for certiorari, as always, does not constitute a ruling on the merits. Moreover, since petitioner is asking us to apply a settled rule of Eighth Amendment law, rather than to fashion a new rule, his claim may be asserted in federal court by way of an application for a writ of habeas corpus.

This Honorable Court has jurisdiction in Petitioner's case given that Petitioner has put before the California State Supreme Court, the United States District Court, Central District of California, and 9th Circuit Court of Appeals, Petitioner's challenge to California's unconstitutional "Three Strikes Legislation," alleging that the retroactive application of California Penal Code section 667, California's "Three Strikes Legislation," violates the ex post facto clause of the tenth section of Article 1 and the supremacy clause of Article 6. Please see 28 U.S.C. 2254, and 28 U.S.C. 2253.

Allegations of habeas corpus petition must be accepted as true, for purpose of appeal from denial with hearing, where neither state nor federal courts had given hearing on factual issues. Please see Clark v. Warden, Md., Penitentiary C.A. 4 (Md.) (1961) 293 F.2d 479, certiorari denied, 82 S. Ct. 1149 369 U.S. 877, 8 L. Ed 2d 279.

Court of Appeals cannot affirm a district court's judgment dismissing petition for writ of habeas corpus unless record on appeal shows that district court reviewed all relevant parts of state court record. Rhinehard v. Gunn, C.A. 9 (Cal.) 1979, 598 F.2d 557.

THE SUPREMACY CLAUSE OF ARTICLE 6, OF THE FEDERAL CONSTITUTION:

State courts have not only power but duty to enforce rights secured by constitution and laws of United States when such issues are involved in proceedings before them. The supremacy clause of the United States Constitution, at its textual core, provides that states are bound by federal law, and nullifies any inconsistent state laws. United States Constitution, Article 6.

The citing of Ashelman v. Pope, 793 F. 2d 1072, 1075 (9th Cir. 1986),

by circuit judges Ferguson, Rymer and Hawkins, as the basis of their argument that they are entitled to absolute judicial immunity from suit, is circuit judges Ferguson, Rymer and Hawkins' attempt to create for themselves a jurisdiction and discretion not given by law. Please see Bradley v. Fisher, S.C. 13 Wall 351 – 357; Ashelman v. Pope, 769 F.2d 1360 (9th Cir. 1985); Ashelman v. Pope, No. 84-1580, cited as 778 F.2d 539, (9th Circuit 1985); Ashelman v. Pope, 793, F.2d at page 1074, (9th Cir. 1986); Beard v. Udall, 648 F.2d 1264 (9th Cir. 1981); and Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980); Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000); and finally please see Forrester v. White, 484 U.S. 219, (7th Cir. 1987). Because Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986), is a fabricated, falsified, and obstruction of justice citation, and a product and result of a conspiracy to obstruct justice by circuit judges Ferguson, Rymer, Hawkins, Browning, Chief Judge Goodwin, Wallace, Sneed, Kennedy, Anderson, Hug, Tang, Skopil, Schroeder, Fletcher, Farris, Pregerson, Alarcon, Poole, Nelson, Canby, Boochever, Norris, Reinhardt, Beezer, Hall, Wiggins, and Brunetti.

Because on December 12, 1985 the above named circuit judges came together with the exception of circuit judges Rymer and Hawkins, to conspire, one with the other, to overrule the legitimate and lawful holding of the honorable senior circuit judges Choy, Sneed and Pregerson. Please see Ashelman v. Pope, 769 F.2d 1360 (1985). Now please see Ashelman v. Pope, 793 F.2d at page 1074, (9th Cir. 1986), bottom right hand corner, before circuit judges Browning, Anderson, Skopil, Schroeder, Farris, Alarcon, Poole, Nelson, Beezer, Hall, and Wiggins. Please see 42 U.S.C. sections 1985 (3) and 1986; U.S. v. Ward Baking Co., E.D. Pa. 1963 224 F.Supp. 66; and United States v. Gilboy, 160 F.Supp. 442 M.D. Pa. 1958; and finally please see Boddie v. Connecticut, 401 U.S. 371, 380 (1971).

If one has knowledge of the conspiracy and with that knowledge intentionally does some act or thing in furtherance thereof he may be held liable. If so, he adopts as his own the past and further acts of all his conspirators. No formal agreement is necessary, a tacit understanding is sufficient and it is not essential that each conspirator have knowledge of the details of the conspiracy or the means to be used. United States v. Gilboy, 160 F.Supp. 442 M.D. Pa. 1958.

CONSPIRACY: Evidence of the same intent or knowledge is required to convict defendants for conspiracy to obstruct justice and commit perjury as would be required to convict them of the substantive offenses U.S. v. Bufalino, C.A. N.Y. 1960, 295 F.2d 408.

KNOWLEDGE OF INTENT ELEMENTS OF OFFENSE: The rule that ignorance of penal laws is no defense to an indictment for their violation has no application in a prosecution for obstructing justice, for the intent to

obstruct the administration of justice can only be present when there is knowledge that justice is being administered. Please see Petibone v. U.S. Idaho, 1983, 13 S.Ct. 542, 148 U.S. 197, 37 L.Ed. 419; U.S. v. Buck, P.A.1860 Fed. Cas. No.14,680.

CONCLUSION

If the alleged trespasser be a judge of a court of record, the only question is: Was the act done a judicial act within his jurisdiction? Of this he is not the judge. If it was not, and he has acted without his jurisdiction, he has ceased to be a judge. Please see Randall v. Brigham, 7 Wall.523, 19 L.Ed. 285; Yates v. Lansing, 9 Johns, 407 – 413, 432.

No court can create a jurisdiction for itself by its own statement of facts put on the record without any proceeding as the basis of such record. Please see Ashelman v. Pope, 778 F.2d 539, (9th Cir. 1985); and Ashelman v. Pope, 793 F.2d at page 1074, (9th Cir. 1986); and finally please see Doe and Associates Law Offices v. Napolitano, 252 F.3d 1026 to 1029 (2001).

Willful abuse of power, corrupt exercise of office, express malice toward an individual and working intentional injury to him by means of false entries made by a judge on the record of a court of general jurisdiction are not judicial acts and not within the discretion of the judge; and satisfactory proof of those facts is admissible in evidence in actions to usurp the wrong done by such acts; to show that in the particular case the judges attempted to create for themselves a jurisdiction and discretion not given by law. Please see Bradley v. Fisher, S.C. 13 Wall. 335 – 357; Ashelman v. Pope, 778 F.2d 539, (9th Cir. 1985); and Ashelman v. Pope, 793 F.2d at page 1074, (9th Cir. 1986); and finally please see Doe and Associates Law Offices v. Napolitano, 252 F.3d 1026 to 1029 (2001).

PETITIONER'S ARGUMENT

Ashelman is African American; Petitioner is African American, the Honorable Supreme Court Justice Clarence Thomas is African American; and the Honorable Senior Circuit Judge Choy, is a minority person; it appears to Petitioner, from what Petitioner has observed and experienced, that judges and prosecutors in the states of Arizona and California; district court judges; in the states of Arizona and California; and the 9th Circuit Court of Appeals would rather commit a crime before they permit an African American to win or prevail. Please see Ashelman v. Pope, 778 F.2d 339, (9th Cir. 1985); and Ashelman v. Pope, 793 at page 1074, (9th Cir. 1986); Doe and Associates Law Offices v. Napolitano, 252 F.3d 1026 to 1029 (2001); Rankin v. Howard, 633

F.2d 844 1980 (9th Circuit); Beard v. Udall, 648 F.2d 1264 (9th Circuit) 1981; Ex parte Virginia, 100 U.S. 339 (1880); Supreme Court of Virginia v. Consumers Union of United States, Inc., 446 U. S. 719 (1980); Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000); and finally please see Forrester v. White, 484 U.S. at 219; and 42 U.S.C. sections 1981, 1983, 1985(3), and 1986.

Please make judicial note that in, Ashelman v. Pope, 778 F.2d 339, (9th Cir. 1985), the circuit judges cited as the basis to proceed, RULE 25; Rule 25 attaches and has to do only with Filing and Service. And also at the bottom of the page in a footnote as the basis for the authority for their ORDER the court said: "The panel finds this case appropriate for submission without argument pursuant to 9th Circuit Rule 778 F.2d-14." 778 F.2d-14 is Road Sprinkler Fitters L.U. No. 669 v. N.L.R.B., 778 F.2d 8 (D.C. Cir. 1985); has to do with NATIONAL LABOR RELATIONS.

Also please make judicial note that California State Attorney General Daniel Lungren was one of the attorneys that argued the cause for the state of California before the United States Supreme Court; where the United States Supreme Court and the 9th Circuit Court of Appeals agreed in the Morales matter, CLARIFYING that EX POST FACTO challenges to STATE LAW are to be evaluated under the analytical framework set forth in Collins v. Youngblood, California Department of Corrections v. Morales, 514 U.S. 499, 503 (1995). So therefore Attorney General Daniel Lungren, KNEW that the United States Supreme Court had decided in the Morales matter that the retroactive application of 667 of the California Penal Code; California's "Three Strikes Legislation" violates the ex post facto clause of the 10th section of Article 1, and the supremacy clause of Article 6. Please see Collins v. Youngblood, Supra; California Department of Corrections v. Morales, Supra; Thompson v. Utah, 170 U.S. 343; Beazell v. Ohio, 269 U.S. 167; Lindsey v. Washington, 301 U.S. 397 401 (1937); Miller v. Florida, 482 U.S. 423 (1987) and Calder v. Bull, 3 Dall. 386, 390 (1798).

After argument before the High Court, Daniel Lungren came on national television and misled the American public by stating that there were a few things the State of California had to iron out with regard to California's Three Strikes Legislation, or words to that effect.

The California State Legislature then thereafter imposed a sentencing method on the citizens of the state of California known to be unconstitutional. Please see the ex post facto clause of the 10th section of Article 1, and the supremacy clause of Article 6 of the federal constitution; 42 U.S.C. section 1983; and the 5th, 8th and 14th amendments to the federal constitution.

Finally, both courts know—state and federal—that California's unconstitutional Three Strikes Legislation targets African Americans, evidenced by African Americans being the minority in the state of California, and are the

majority that suffer the horrific effects of California's unconstitutional Three Strikes Legislation. Please see 42 U.S.C., sections 1981, 1983,1985(3), and 1986. And please see Scheuer v. Rhodes, 416 U.S. 232; Ex parte Virginia, 100 U.S. 339, 346 – 347; Monroe v. Pope, 365 U.S. 167 (1961); and finally please see Butz v. Economou, 438 U.S. 478 (1978); Harlow v. Fitzgerald, 457 U.S. 800 (1982); federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers, Bivens v. Six Unknown Narcotics Agents, 403 U.S. 388, pages 496 – 504.

Rule 10, Reasons for granting the Petition. The Honorable Justice Stevens, Justice Souter, Justice Ginsburg, Justice Kennedy, and Justice Breyer's, opinions in Michael Wayne Riggs, No. 9850221, on Petition for Writ of Certiorari to the Court of Appeals of California, Fourth Appellate District, are entirely INCONSISTENT with their opinions given in California Department of Corrections v. Morales, 514 U. S. 499, 503 and N.3, 115 S. Ct. 1597, 1600 – 01, 1603 and n.3 (1995); requiring clarification. And it requires clarification why the other justices of the United States Supreme Court remained silent in Michael Wayne Riggs, Supra, in view of your holding in California Department of Corrections v. Morales, Supra. Please see Williams v. Taylor, 529 U.S. 362, 405 – 06 (2000); see also Tran v. Lindsey, 212 F.3d 1143, 1153 (9th Cir. 2000), (defining "unreasonable application" as involving situations where the state court has committed clear error), cert. denied, 121 S.Ct. 340 (2000). Finally please see 42 U.S.C. sections 1981, 1985 (3); 1986.

> Action for neglect to prevent:
> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured.

Please see 42 U.S.C. Section 1986.

The Honorable Stephen J. Hillman, reported and recommended to the Honorable Manual Real, that Petitioner's habeas corpus petition should be dismissed with prejudice because the petition herein was filed after the president signed into law the Anti-terrorism and Effective Death Penalty Act of 1996. Please see 28 U.S.C. sections 2254(d), as amended by the act:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was ADJUDICATED ON THE MERITS IN STATE COURT PROCEEDINGS unless the adjudication of the claim—(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the

facts in light of the evidence presented in the state court proceedings.

Number 1: Petitioner's case was not adjudicated on the merits in state court proceedings, the California State Supreme Court issued a silent denial. Please see Williams v. Taylor, 529 U.S. 362, 405 – 06 (2000). Under the Anti-terrorism and Effective Death Penalty Act (ATDPA) federal court first considers whether the state court's decision was erroneous prior to considering whether it was contrary to, or involved an unreasonable application of clearly established federal law as determined by the United States Supreme Court. See 28 U.S.C.A. sections 2254(d), and please see Van Tran v. Lindsey, 212 F.3d 1143 (9th Cir. 2000).

Therefore the Honorable Stephen J. Hillman and the Honorable Manual Real knowingly, willingly and deliberately violated a federal statute because Collins v. Youngblood, Supra, and California Department of Corrections v. Morales, Supra, qualifies as clearly established federal law, as determined by the Supreme Court of the United States. Please see Williams v. Taylor, 529 U.S. 362, 405 – 06 (2000); Tran v. Lindsey, 212 F.3d 1143, 1153 (9th Cir. 2000); Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000); and see United States v. Ward Baking Co., E.D. Pa. 1963 224 Supp. 66; and U.S. v. Gilboy, 160 F.Supp. 442 M.D. Pa. 1958; and finally please see 42 U.S.C. sections 1981, 1985(3) and 1986, and the 5th, 8th and 14th amendments to the federal constitution.

Number 2: The Honorable Christina A. Snyder acted in the clear and complete absence of all jurisdiction by dismissing Petitioner's complaint with prejudice, pursuant to Federal Rules of Civil Procedure 12(b) (6), in Case No. CV-00-07569; 9th Circuit Case No. 00-56911, the Ninth Circuit Court of Appeals using as their authority Ashelman v. Pope, 793 F.2d 1072 (9th Cir 1986), claiming that Petitioner had failed to state a claim upon which relief can be given because circuit judges Ferguson, Rymer and Hawkins are absolutely immune from suit.

Under the authority of Ashelman v. Pope, 793 F.2d 1072, the Honorable Christina A. Snyder, could get away with dismissing Petitioner's complaint with prejudice pursuant to Fed. R. Civil P. 12(b) (6) as discretionary judicial acts, no matter how erroneous or corrupt. Please see Mircles v. Waco, 502 U.S. 9, [112 S.Ct. 266, 116 L.Ed.2d 9]; and Pierson v. Ray, 386 U.S. 547 [87 S.Ct. 1213, 18 L.Ed.2d 288 (1967)].

However, Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000), overrules Ashelman v. Pope, 793 F.2d 1072, (9th Cir. 1986); reinstating Rankin v. Howard, 633 F.2d 844 (1980); and Beard v. Udall, 648 F.2d 1264 (1981).

Harvey states in pertinent part:

Absolute judicial immunity is overcome in only two sets of circumstances; a judge is not immune from liability for non judicial actions, or actions not taken in the judge's judicial capacity, and a judge is not immune for actions, THOUGH JUDICIAL IN NATURE, taken in the complete absence of all jurisdiction.

Pierson v. Ray, 386 U.S. 547, decided by this honorable court from the 5th Circuit Court of Appeals requiring clarification. Please see Forrester v. White, 484 U.S. 219 (1987); certiorari to the United States Court of Appeals for the SEVENTH CIRCUIT, 20 years after Pierson v. Ray, Supra, requiring clarification.

A judge can be liable for participating in a conspiracy if acts indicating participation were taken by judge otherwise than in his judicial role. Please see Beard v. Udall, 648 F.2d 1264 (1981).

Dismissal pursuant to Rule 12(b) (6) is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Ballistrei v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988).

There were genuine issues of material facts in dispute that required trial, precluding summary judgment. Please see Fredricksburg v. Contra County Dept. of Health Services, 172 F.3d 1176, 1179 – 1181 (9th Circuit 1999); Pryer v. Seyforth, Shaw, Fairweather and Geraldson, 212 F.3d 976, 979 – 980 (7th Cir. 2000); mid Flyn v. Sandahl, 58 F.3d 283 (7th Cir. 1995).

Circuit judges Ferguson, Rymer and Hawkins failed to meet their burden of demonstrating that they were entitled to judgment as a matter of law. Please see Pennzoil v. Texaco Inc., 481 U.S. 1, 25; and May Co. Dept. Store v. Graphic Process Co., 637 F.2d 1211 – 1216 (9th Cir. 1980); and Beard v. Udall, 648 F.2d 1264 (1981).

Number 3: California is the only state in the American union, that their "Three Strikes Legislation" violates the ex post facto clause of the 10th section of Article 1; and the supremacy clause of Article 6. Please see Spencer v. Texas, 385 U.S. 554, 560 (1967).

The punishment is for the new crime only, but is the heavier if he is a habitual criminal. The statute imposing a punishment on none but future crimes is not ex post facto. Please see McDonald v. Massachusetts, Supreme Court Reporter 178 – 181, at page 389 to 390 (1900). However, California is the only state in the American union that pre-dates the enactment of their Three Strikes Legislation and increases the punishment for prior criminal acts. Please see Thompson v. Utah, 170 U.S. 343; Beazell v. Ohio, 269 U.S. 167; Lindsey v. Washington, 301 U.S. 397, 401, 1937; Miller v. Florida, 482 U.S. 423 (1987); Weaver v. Graham, 450 U.S. 24 (1981); finally please see Calder v. Bull, 3

Dall. 386, 390, requiring clarification.

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. Please see Rankin v. Howard, 633 F.2d 844 (1980).

FACTORS CONSIDERED; Petitioner contends: No. 1: There is a conflict between the 5th, 7th and 9th Circuit Court of Appeals. Please see Rankin, Supra. No. 2: There are conflicts between several circuit courts of appeal and the California Supreme Court. Please see the ex post facto clause of the 10th section of Article 1. No. 3: The 9th Circuit Court of Appeals has departed dramatically from the accepted and usual course of judicial proceedings by obstructing justice in Ashelman v. Pope, 769 F.2d 1360 (9th Cir. 1985); Ashelman v. Pope, 778 F.2d 539 (9th Cir. 1985); and Ashelman v. Pope, 793 F.2d at page 1074, (9th Cir. 1986), bottom right hand corner. Please see 42 U.S.C. sections 1985(3) and 1986. No. 4: California State Supreme Court has decided, or failed to decide, a federal question in conflict with another state court of last resort. Please see the supremacy clause of Article 6 of the federal constitution. No. 5: The 9th Circuit Court of Appeals' decision in Ashelman v. Pope, 793 F.2d 1072, used by circuit judges Ferguson, Rymer and Hawkins, conflicts with a United States Supreme Court decision; please see Forrester v. White, 484 U.S. 219 (7th Cir. 1987); there being an intercircuit split that threatens the consistency of federal law. Please see the ex post facto clause of the 10th section of Article I and the supremacy clause of Article 6 of the federal constitution. No. 6: The California State Legislature has imposed a sentencing method on the citizens of the state of California known to be unconstitutional. Please see 667, 1170.12, 667.5 subdivision (©) and 1192.7 subdivision (©) of the California Penal Code. Now please see the ex post facto clause of the 10th section of Article 1, and the supremacy clause of Article 6; Williams v. Taylor, 529 U.S. 362 (4th Circuit 2000); 28 U.S.C. 2254(d) (1); Van Tran v. Lindsey, 212 F.3d 1143 (9th Circuit 2000).

Article I of the United States Constitution provides that neither congress nor any state shall pass any "ex post facto law. See Article 1 section 9 C1.1, section 10 C1.1. Please see Miller v. Florida, 482 U.S. 429 (1986).

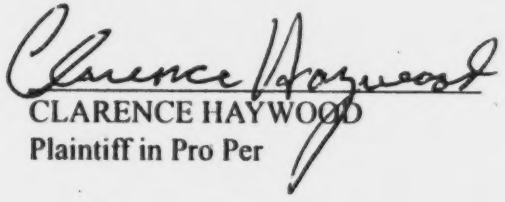
California's "Three Strikes Law" is retrospective in that it applies to events occurring before its enactment, and disadvantages the offender affected by it. Weaver v. Graham, 450 U.S. 24 1981; finally please see Calder v. Bull, 3 Dall. 386, 391 – 392 (1798). California's unconstitutional Three Strikes Legislation involves an important federal question that should be settled by the United States Supreme Court.

PRAYER

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below, and that a Petition for a Writ of Certiorari will be granted.

Dated: June 10, 2002

Respectfully submitted,



CLARENCE HAYWOOD
Plaintiff in Pro Per

DECLARATION OF SERVICE

I declare:

I am a resident in the County of San Bernardino, State of California. I am over the age of 18 years and not a party to the within cause; my mailing address is Post Office Box 1262, San Bernardino, California 92402.

On 6-10-2002, I mailed to the Clerk of the United States Supreme Court the original and 10 copies of Petitioner's PETITION FOR WRIT OF CERTIORARI, by priority mail to U.S. Supreme Court Building, Washington D.C. 20543.

And a copy to the Honorable Circuit Judges Ferguson, Rymer and Hawkins at their various addresses.

And a copy to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue. N.W., Washington, D.C. 20530-0001.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 6/10-2002, at Riverside and San Bernardino, California.

Dated: June 10, 2002

Respectfully submitted,

Susan Melling

SUSAN MELLING

APPENDICES

NO. 3

Appendix—A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARENCE HAYWOOD, Plaintiff-Appellant, v. FERGUSON, Circuit Judge; RYMER, Circuit Judge; and HAWKINS, Circuit Judge, Defendants-Appellees.	No. 00-56911 DC#CV-00-07569-CAS Central District of California ORDER

Before: KOZINSKI, T.G. NELSON and TALLMAN, Circuit Judges

Appellant's petition for panel rehearing is denied.

No further filings shall be accepted in this closed appeal.

Appendix—A

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-56911
CT/AG#: CV-00-07569-CAS

CLARENCE HAYWOOD
Plaintiff—Appellant

v.

FERGUSON, Circuit Judge; RYMER, Circuit Judge;
HAWKINS, Circuit Judge
Defendants—Appellees

APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said Central Court in this cause be, and hereby is affirmed.

Filed and entered on July 23, 2001

Appendix—A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARENCE HAYWOOD, Plaintiff-Appellant, v. FERGUSON, Circuit Judge; RYMER, Circuit Judge; and HAWKINS, Circuit Judge, Defendants-Appellees.	No. 00-56911 D. C. No. CV-00-07569-CAS MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted July 9, 2001**

Before: KOZINSKI, T.G. NELSON and TALLMAN, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix—A

Clarence Haywood appeals pro se the district court's Fed. R. Civ. P. 12(b)(6) dismissal of his complaint brought under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) against three Ninth Circuit Court of Appeals Judges, based upon their denial of his application to file a second or successive habeas corpus petition.

Because Judges Ferguson, Rymer and Hawkins are entitled to absolute judicial immunity from Haywood's suite, dismissal was proper. *Ashelman v. Pope*, 793 F.2d 1072, 1075 – 76, 1078 (9th Cir. 1986) (en banc).

AFFIRMED.

NO. 4

Appendix—B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CLARENCE HAYWOOD,	)	Case No. CV 00-07569-CAS
	)	(AIJx)
Plaintiff,	)	
	)	ORDER GRANTING
	)	DEFENDANT'S MOTION
vs.	)	TO DISMISS WITH
	)	PREJUDICE
FERGUSON, RYMER, and HAWKINS,	)	
Circuit Judges,	)	
Defendants.	)	
	)	
	)	
	)	

The Court concludes that this matter is appropriate for decision without oral argument, and hereby vacates the hearing previously set for October 23, 2000. See Fed. R. Div. P. 78; Local Rule 7.11.

Plaintiff Clarence Haywood, proceeding in propia persona, is or was previously a prisoner in state custody. On April 16, 1999, plaintiff filed a document entitled "Complaint for Obstruction of Justice and the Denial of Plaintiff's Civil Rights," under the caption Haywood v. United States, case no. CV 99-4029-CBM. The Court deemed the complaint to be a petition for writ of habeas corpus, and dismissed the complaint without prejudice, on the ground that before a second or successive habeas petition may be filed, the petitioner must obtain authorization to proceed from the Court of Appeals. See 28 U.S.C. § 2244 (b) (3) (A).[1]

Thereafter, on January 3, 2000, plaintiff filed a second "Complaint for Wrongful Imprisonment and the Denial of Plaintiff's Civil Rights, " under the caption Haywood v. State of California, case no. CV 00-00004-DDP. On

[1] In dismissing the complaint, the Court observed that the plaintiff had filed approximately eighteen previous federal habeas petitions.

February 25, 2000, the Court filed an order dismissing this pleading without prejudice on the ground, among others, that the complaint was in effect a second or successive habeas petition, and therefore the plaintiff was required to obtain authorization to pursue that petition from the Court of Appeals.

On March 8, 2000, plaintiff filed in the Court of Appeals for the Ninth Circuit an application for leave to file a second or successive habeas petition. Plaintiff attached the orders of the district court dismissing the complaints in case nos. CV 99-04029-CBM and CV 00-00004-DDP. A Ninth Circuit panel consisting of the Honorable Warren J. Ferguson, Pamela Ann Rymer and Michael Daly Hawkins denied the application by order filed June 28, 2000.

On July 12, 2000, plaintiff filed the present suit against Judges Ferguson, Rymer and Hawkins. The complaint, which alleges that defendants violated plaintiff's civil rights, seeks relief pursuant to 42 U.S.C. § 1983.[2] Compl. at 1. It alleges that defendants violated various provisions of the Constitution by taking approximately three and one-half months to rule on plaintiff's application to file a successive habeas petition. Id. at 2—3. 28 U.S.C. § 2244 (b) (3) (D) provides that the Court of Appeals "shall grant or deny the authorization to file a second or successive [habeas corpus] application not later than 30 days after the filing of the motion." The complaint also asserts that defendants erred in denying the application, and that defendants conspired with various state and federal judges "to prevent and obstruct justice, and the due administration of the American laws." Id. at 3. In support of the conspiracy allegation, plaintiff cites a number of California and federal criminal statutes, the Federal Rules of Criminal Procedure as a whole, and several provisions of the Constitution. Plaintiff prays for damages of $1 billion, "for the tortuous mental anguish caused by the State and Federal courts by their intentional infliction of emotion distress." Id. at 4.

On August 1, 2000, plaintiff filed a "First Amendment to Complaint." This document asserts that California's "three strikes" statutes are unconstitutional. Attached to the "First Amendment to Complaint" is an order of the San Bernardino County Superior Court denying plaintiff's petition for writ of habeas corpus. It appears from this order that plaintiff has been sentenced under the three strikes law. The "First Amendment to Complaint" makes no reference to plaintiff's allegations against defendants in this case.

The parties are now before the Court on defendants' motion to dismiss the amended complaint, filed September 22, 2000. A Rule 12(b) (6) motion

[2] 42 U.S.C. § 1983 does not apply to this case because defendants are federal, as opposed to state or local, officials. As defendants acknowledge in their motion to dismiss, this case is to be treated as an action arising under Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). See Def.s' Mot. to Dismiss at 1.

tests the legal sufficiency of the claims asserted in a complaint. A court must not dismiss a complaint for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45 – 46 (1957) Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 338 (9th Cir. 1996).

In a motion pursuant to Fed. R. Civ. P. 12(b) (6), a court must accept as true all material allegations in the complaint, as well as all reasonable inferences to be drawn from them. Cahill, 80 F.3d at 338; NL Indus. Inc., v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). The complaint must be read in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d 1037, 1039 (9th Cir. 1988). However, a court need not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

Dismissal pursuant to Rule 12(b) (6) is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988).

Furthermore, unless a court converts a Rule 12(b) (6) motion into a motion for summary judgment, a court cannot consider material outside of the complaint (e.g., facts presented in briefs, affidavits, or discovery materials). Levine v. Diamanthuser, Inc., 950 F.2d 1478, 1483 (9th Cir. 1991). A court may, however, consider exhibits submitted with the complaint and matters that may be judicially noticed pursuant to Federal Rule of Evidence 201. Hal Roach Studios, Inc., v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989); Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279 (9th Cir. 1986).

For all of these reasons, it is only under extraordinary circumstances that dismissal is proper under Rule 12(b) (6). United States v. City of Redwood City, 640 F.2d 963, 966 (9th Cir. 1981).

As a general rule, leave to amend a complaint which has been dismissed should be freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied "when the court determines that other facts consistent with the challenged pleading could not possibly cure the deficiency." Schreiber Distrib. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

Defendants assert that their Rule 12(b) (6) motion should be granted with prejudice based upon the fact that they are immune from suit. See Moore v. Brewster, 96 F.3d 1240 (9th Cir. 1996) (affirming a Rule 12(b) (6) dismissal based on judicial immunity). Plaintiff has filed no opposition to the motion to dismiss.

Defendants' argument that the complaint must be dismissed on the basis of judicial immunity is correct. Judicial immunity insulates a judge from civil

liability for damages unless the judge (a) acts outside his or her judicial capacity, or (b) though acting in a judicial capacity, acts "in the complete absence of all jurisdiction," Mireles v. Waco, 502 U.S. 9, 11 – 12 (1991); see also Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000). As noted above, plaintiff argues for liability on three grounds: (1) the judges erred in ruling against him; (2) the judges took too long to rule; and (3) the judges engaged in an unspecified criminal conspiracy. As to the first ground, a judge's ruling is an act within his or her judicial capacity, regardless of whether it is correct or erroneous, see Harvey, 210 F.3d at 1012. As to the second ground, even if the judges did not act within the time specified in 28 U.S.C. § 2244 (b) (3) (D), they plainly did not act in the complete absence of all jurisdiction in deciding the case after thirty days. As to the third ground, a criminal conspiracy might not be covered by judicial immunity, but plaintiff offers no explanation of the purported conspiracy, and given the judicial act at issue, this Court can conceive of no set of facts that could support allegations of criminal conspiracy. A plaintiff's conclusory allegation that a judge acted outside his or her judicial capacity is not enough to survive a motion to dismiss. See Lonneker Farms, Inc., v. Klobucher, 804 F.2d 1096, 1097 (9th Cir. 1986).

Notwithstanding the general rule, a motion to dismiss may be granted with prejudice where it appears to a certainty that plaintiff cannot state a claim. See Albrecht v. Lund, 845 F.2d 193, 195 (9th Cir. 1988). Dismissal of a suit against a judge on grounds of judicial immunity fits within this exception. See Moore, Supra, 96 F.3d at 1243 (affirming denial of motion to amend complaint against judge where complaint was dismissed, on grounds of judicial immunity, for failure to state a claim on which relief can be granted). A disappointed litigant cannot assert a claim against the judges who ruled against him where his complaint is simply that they should have ruled otherwise, or ruled against him sooner. Nor does a conclusory allegation that the judges engaged in criminal activity show a possibility that plaintiff could state a claim in an amended pleading. See e.g., Lonneker Farms, Supra, 804 F.2d at 1096 (affirming dismissal, based on judicial immunity, of complaint alleging that bankruptcy judge conspired with bankruptcy trustee in ruling against litigant).

For these reasons, defendants' motion to dismiss plaintiff's Complaint and First Amendment to Complaint with prejudice is granted.

IT IS SO ORDERED.

Date:

CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

Appendix—B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CLARENCE HAYWOOD,	)	Case No. CV 00-7569-CAS
	)	(AIJx)
Plaintiff,	)	
vs.	)	JUDGMENT
	)	
FERGUSON, RYMER, and HAWKINS,	)	
Circuit Judges,	)	
Defendants.	)	
	)	
	)	

Pursuant to the Court's order dated October 19, 2000, granting defendants' motion to dismiss the complaint and first amendment thereto with prejudice, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants shall have judgment against plaintiff, and plaintiff shall take nothing by his complaint and first amendment thereto.

IT IS SO ORDERED.

Date:

_____

_____
CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE